CANUCK LAW
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FEBRUARY 18, 2025 BY RONNIE

Free To Fly Case Survives: How This s.2(d) Challenge Differs From Payne

THIS COURT ORDERS that:

1. The following shall be struck from the amended statement of claim:

   a. Paragraphs 1(h), 1(k), 1(l), 1(m);

   b. The references in paragraphs 6, 16, 77 and 82 to subsections 2(a), 7 and 15 of the Charter; and

   c. Paragraphs 78, 80, 81, 84 and 85.

2. The plaintiffs shall amend the amended statement of claim to incorporate those paragraphs set out in Appendix A of the plaintiffs' motion record that relate to the claims of inducement of breach of contract, misfeasance in public office and violation of subsection 2(d) of the Charter and the remedies arising therefrom.

3. The further amended statement of claim shall be served and filed within 45 days of the date of this order.

4. Each party shall bear its own costs of this motion.

5. The defendants' motion is otherwise dismissed.

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FREE TO FLY CLASS ACTION LAWSUIT
Free to Fly Canada, through retained counsel Umar Sheikh of Sheikh Law, has filed a Class Action lawsuit against the Canadian government on behalf of aviation employees harmed as a result of the vaccination mandates.
Plaintiffs Greg Hill, Brent Warren, and Tanya Lewis are representative of a proposed class of those subjected to tortuous harm by Transport Canada's Interim Order Respecting Certain Requirements for Civil Aviation Due to COVID-19, No. 43. This Order mandated vaccination for those within the civil aviation community in 2021. In so doing, it induced employers to violate contractual agreements for thousands of Canadian employees, violated rights guaranteed by the Charter, and interfered with free and fair collective bargaining. This is the first time a case of this type has been brought in Canadian Courts and we are proud to help chart this course.
The class action is open to unvaccinated employees adversely affected by Transport Canada's Interim Order, No. 43. This could be reflected through termination of employment, coerced early retirement, or suspension. These suspensions were often called a leave of absence by employers, but given their involuntary nature were not thus, by definition. We have been failed by our government, unions, and employers, and this proceeding is a means to fight back.

Earlier this month, a Proposed Class Action lawsuit from 3 airline employees survived a Motion to Strike. They argue that the Government interfered with their employment by imposing the injection mandates (a.k.a. vaccine passports). The group running it is called Free To Fly. (See Twitter/X).

This follows on the heels of another case (Payne), from Umar Sheikh. Both cases: (a) are Proposed Class Actions; (b) sue the Federal Government; (c) involve injection mandates; (d) involve Plaintiffs who were employed, and (e) refused the shots. Despite these similarities, there are important differences, especially around who the employers actually are.

The Plaintiffs here have decided to voluntarily remove portions of their own suit, in order to focus on the stronger ones.

What The Further Amended Claim Will Include

Originally, there were 9 separate torts pleaded. Rather than continue that way, the Plaintiffs decided that 6 of them will no longer be pursued, and the focus will be on the remaining 3. Given that there is some overlap and redundancy as well, this makes sense.

Torts that will be pursued in the Amended Claim:

- Inducement of breach of contract
- Malfeasance in public office

- Violation of subsection 2(d) of the Charter

Torts that will not be pursued in the Amended Claim:

- Negligence
- Interfering with contractual relations
- Breach of privacy
- Violation of subsection 2(a) of the Charter
- Violation of subsection 7 of the Charter
- Violation of subsection 15 of the Charter

Additionally, several pages of proposed amendments were included by the Plaintiffs for the remaining torts. They helped persuade the Judge.

> [26] At the outset of these reasons, I stated that a motion to strike is not an exercise in critiquing inelegantly drafted pleadings. Nonetheless, where as here, a party is ***willing to amend a pleading and has proposed specific amendments*** that would assist in clarifying, confirming or defining the issues for the benefit of the opposing party and the Court, ***such amendments should be permitted and encouraged***.

> [27] On this motion, I am satisfied that the currently pleaded facts in the amended statement of claim ***show more than a scintilla of a cause of action*** in respect of each of the grounds remaining in issue after the concession by the plaintiffs. ***However, the pleadings can be improved by some of the plaintiffs' proposed amendments. Thus, the plaintiffs shall further amend the amended statement of claim to incorporate those paragraphs set out in Appendix A*** of the plaintiffs' motion record that relate to the claims of inducement of breach of contract, misfeasance in public office and violation of subsection 2(d) of the Charter and the remedies arising therefrom.

Associate Justice Crinson agreed that at least some of the proposed changes would be beneficial in helping to redraft the case.

Subtle Differences Between Hill And Payne Cases

Both Hill and Payne are Proposed Class Actions against the Federal Government. They are consequences of imposing injection mandates throughout Canada. They invoke Section 2(d) of the Charter, which is Freedom of Association. On the surface, they appear identical. However, they're not, and Hill is actually in a stronger position.

Just after the New Year, Justice Southcott of the Federal Court handed down a decision which (mostly) left intact a Proposed Class Action for Federal workers. They had been forced from their employment for refusing to take the injections.

Up until this point, such challenges had failed. The reason is that sections 208 and 236 of the Federal Public Sector Labour Relations Act (FPSLRA) gave the right to *grieve*, but not to *sue*. This resulted in a lack of jurisdiction for the Court. Payne succeed — so far — by arguing that the way injection mandates were implemented circumvented any legitimate grievance or collective bargaining process.

Hill and Warren worked for Air Canada, and Lewis worked for WestJet. Both airlines are unionized employers, which on the surface, one would suspect similar questions around jurisdiction.

But here, the employers are not the Defendants. The Government is. Ottawa is being sued for interfering with *other parties'* business relationships, namely the airlines and their workers. Instead of wrongful termination, the case is over an inducement to breach a contract. The allegation is that the mandates interfered with the free association of *other people*.

With this difference in mind, the typical defence raised — lack of jurisdiction — doesn't apply in Hill. The Federal Government can't rely on their go-to response.

Sure, they'll likely argue that any inducement to breach a contract, or interference with business relations was necessary and justified. But that will be a lot harder to sell. For that reason, the Hill case seems to stand in a better position, for now.

Brief Timeline Of Major Events In Case

May 15th, 2023: Statement of Claim is filed in Federal Court.

June 1st, 2023: It's determined that there's to be case management for the remainder of the proceedings, with Associate Judge Crinson and Justice Aylen assigned.

October 11th, 2023: Amended Statement of Claim is filed.

December 10th, 2023: Government requests that requirement to file a Statement of Defence be deferred until after the issue of certification is dealt with.

April 1st, 2024: Government brings its Motion to Strike the case.

May 3rd, 2024: Plaintiffs responding with their own Motion Record, asking that the case be allowed to proceed to the next stages. It also gives several pages of proposed amendments.

May 22nd, 2024: Motion is heard orally, but with the decision reserved.

February 7th, 2025: The Motion is (mostly) dismissed, and amendments are allowed for the remaining torts.

Note: All of the dates listed can be confirmed by searching the respective cases on the Federal Court website. It keeps a detailed listing of all significant events.

Payne is currently being appealed which is no surprise. However, given the different relationships with that one, Hill should be okay *regardless* of whether or not it's overturned. The FPSLRA simply doesn't apply in Hill.

If Ottawa wants this one tossed, completely new arguments are needed.

Of course, this is nowhere near the end of the road. Certifying the case as a Class Action is the next major hurdle, assuming this ruling is not appealed. Still, an important hurdle has been crossed.

It's nice to report a success for once.

FREE TO FLY FEDERAL COURT DOCUMENTS:
(1) Hill Proposed Class Action Statement Of Claim May 2023
(2) Hill Order Case Management June 2023
(3) Hill Amended Statement Of Claim October 2023
(4) Hill Defendant Motion Record To Strike Claim April 2024

(5) Hill Plaintiff Responding Motion Record To Strike Claim May 2024

(6) Hill Plaintiff List Of Proposed Amendments May 2024

(7) https://www.canlii.org/en/ca/fct/doc/2025/2025fc242/2025fc242.html

PAYNE APPEAL DOCUMENTS:

(1) Payne Notice Of Appeal January 2025

(2) Payne Notice Of Appearance January 2025

PAYNE FEDERAL COURT DOCUMENTS:

(1) Payne Statement Of Claim October 2023

(2) Payne Notice Of Intent To Defend November 2023

(3) Payne Letter Intent To Strike May 2024

(4) Payne Defendant Motion Record To Strike August 2024

(5) Payne Plaintiff Responding Motion Record October 2024

(6) https://www.canlii.org/en/ca/fct/doc/2025/2025fc5/2025fc5.pdf

(7) https://www.canlii.org/en/ca/fct/doc/2025/2025fc5/2025fc5.html

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